

No. 1-10-3279

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 01 CR 1846301
)	
DARREN GALLOWAY)	Honorable
)	Larry G. Axelrod,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

- ¶ 1 *HELD:* The circuit court did not err in dismissing the postconviction petition where defendant is not currently imprisoned as required by the Post-Conviction Hearing Act.
- ¶ 2 Defendant Darren Galloway was charged by indictment in 2001 with eight counts of aggravated criminal sexual abuse. As a result of a negotiated plea agreement, Galloway entered a guilty plea to one charge of aggravated sexual abuse, and was sentenced to three years' probation,

which he completed in 2005. Galloway is also required to register as a sex offender for the remainder of his life. After two arrests in 2009 when his registration status was questioned, Galloway filed a petition for postconviction relief. The circuit court granted the State's motion to dismiss on the grounds that Galloway lacked standing to file a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122–1 *et seq.* (West 2006)). Galloway appeals, contending that he has the requisite standing to file a petition for postconviction relief because he suffers an injury not only from the lifetime registration requirement but also from repeated false arrests and false imprisonments related to that requirement. Galloway further contends that the controversy is ripe for review because he could be falsely arrested again. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 In July 2001, Galloway was charged with eight counts of aggravated sexual abuse. He subsequently entered into a negotiated plea agreement. On December 12, 2001, in exchange for his guilty plea to one count of aggravated sexual abuse (count I), he was sentenced to three years' probation. At that time, Galloway was informed that as a result of his conviction, he would be required to register as a sex offender for the remainder of his life. Galloway completed his probation successfully on January 7, 2005.

¶ 5 In 2009, Galloway was arrested on two separate occasions, one week apart, for failure to register as a sex offender. Galloway informed the police on both occasions that he was in compliance with the registration requirement. After being detained for five to six hours both times, he was released without any charges after it was discovered that he had, in fact, properly

registered.

¶ 6 On November 4, 2009, Galloway filed a petition for postconviction relief challenging his conviction and sentence, claiming that his trial counsel was ineffective, that he did not understand the ramifications of his guilty plea, and that he was actually innocent. The State filed a motion to dismiss, arguing that Galloway lacked standing to file a postconviction petition because he had completed his probation four years earlier. Galloway argued that he had standing as a result of the two arrests in connection with his requirement to register as a sex offender. Following oral argument, the trial court granted the motion and dismissed the petition. Galloway timely filed this appeal.

¶ 7 ANALYSIS

¶ 8 The crux of this dispute is whether Galloway has standing to file a petition for postconviction relief under the Act even though he has completed the sentence imposed by the conviction which he wishes to challenge. The standard of review for considering an appeal of a circuit court's dismissal due to lack of standing is *de novo*. *People v. Robinson*, 232 Ill.2d 98, 105 (2008).

¶ 9 Galloway's primary contention on appeal is that his two arrests resulting from his requirement to register as a sex offender give him standing to sue under the Act. Galloway argues that in order to have standing, he must simply demonstrate that he has suffered an actual, personal injury. Relying on *Greer v. Illinois Housing Development Authority*, 122 Ill.2d 462, 492-493 (1988), Galloway argues that if the claimed injury is "distinct and palpable", "fairly traceable" to the defendant's actions, and substantially likely to be prevented or redressed by the

grant of the requested relief, he has the requisite standing to file a petition under the Act. This reliance is misplaced. *Greer* enumerates the requirements for standing in a civil suit. As such, it is not applicable to petitions filed under the Act.

¶ 10 Under the Act, a postconviction petition may be filed by "[a]ny person imprisoned in the penitentiary." 725 ILCS 5/122-1 (West 2006). While only seeming to cover current prisoners, this definition has been expanded since the statute's enactment. See, e.g., *People v. Martin-Trigona*, 111 Ill.2d 295, 301-302 (1986). "Imprisoned in the penitentiary" also includes those individuals who are on parole or on probation. *People v. Montes*, 90 Ill.App.3d 355, 357 (1980). Individuals who are on mandatory supervised release are also now covered by the Act. *People v. Correa*, 108 Ill.2d 541, 546-547 (1985). Finally, a person who has been released on appeal bond is considered "imprisoned in the penitentiary" for the purposes of the Act. *Martin-Trigona*, 111 Ill.2d at 301-302.

¶ 11 The test for whether a defendant is considered to be "imprisoned" is whether a person's liberty is "constrained by virtue of a criminal conviction." *Martin-Trigona*, 111 Ill.2d at 301. The period of time during which the defendant has a liberty interest which is covered by the Act ends with the conclusion of the sentence. *Id.* It is well-settled that postconviction relief is no longer available after the underlying sentence has been served by the petitioner. See *People v. Downin*, 394 Ill.App.3d 141, 143 (2009). Moreover, lifetime registration as a sex offender is "merely a collateral consequence of defendant's conviction." *Id.* at 146.

¶ 12 Galloway's plea agreement resulted in three years' probation, ending in 2005, with a requirement that he register as a sex offender for the remainder of his life. Galloway incorrectly

characterizes his 2009 arrests as restraints on his liberty, directly flowing from his aggravated criminal sexual abuse conviction. Galloway attempts to distinguish the present case from *Downin*, contending that the 2009 arrests restrained his liberty under the auspices of his sentence. However, isolated arrests where a defendant's sex offender registration status is verified cannot be characterized as imprisonment as defined by the Act. To construe it otherwise is inconsistent with the holding in *Downin* that "[l]ifetime registration as a sex offender is not a constraint on liberty sufficient to bring it within the Act." *Id.* The *Downin* court further noted that the Act is "separate and distinct from the sentencing procedure." *Id.* An arrest due to a collateral consequence of conviction, which itself is not sufficient to give rise to standing under the Act, is not the type of restraint on a defendant's liberty which falls under the protection of the Act.

¶ 13 Ultimately, Galloway has fully served his sentence, removing him from the class of individuals who have standing to file a petition under the Act, and thus, the circuit court correctly dismissed the petition.

¶ 14 Affirmed.